

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Joint Petition for Rulemaking)
to Establish Rules for Subscriber)
Access to Cable Home Wiring)
for the Delivery of Competing and)
Complimentary Video Services)

RM No. 8380

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To the Commission

**JOINT COMMENTS IN OPPOSITION
TO JOINT PETITION FOR RULEMAKING**

Cablevision Industries Corp., MultiVision Cable TV Corp., and Providence Journal Company¹ (hereinafter "Joint Parties"), by their attorneys, hereby submit their Joint Comments in opposition to the above-captioned Joint Petition for Rulemaking filed by Media Access Project, United States Telephone Association and Citizens for A Sound Economy Foundation (hereinafter "Joint Petition"). Each of the Joint Parties owns and operates cable television systems and, accordingly, will be directly and substantially affected by the outcome of this proceeding.

Apparently not satisfied with the Commission's recent rulemaking to carry out the stated requirement and clear intent of Congress for rules governing the disposition of interior wiring upon termination of cable service², the

¹ Providence Journal Company conducts its cable television operations through its subsidiaries Colony Communications, Inc. and King Videocable Company.

² Report and Order in MM Docket No. 92-260, FCC 93-73, 8 FCC Rcd 1435 (1993).

Joint Petition urges the Commission to take an unwarranted and unnecessary leap beyond those newly-adopted rules by imposing on cable operators requirements parallel to those for telephone interior wiring and to permit cable subscribers to use cable-installed interior wiring for any other purpose from the inception of cable service. In its zeal to hasten the arrival of its view of the world of cable and telephone convergence, the Joint Petition glosses over express statutory language, and accompanying legislative history, which limits the Commission's authority in this area and ignores practical, real world considerations, such as signal leakage and theft of service, which are peculiar to the cable industry and which distinguish it from telephone.

There are a number of short answers to the contentions advanced by the Joint Petition; perhaps the shortest is that its proposed rule is simply unnecessary. Whatever the status of cable interior wiring upon its initial installation, whether determined by state property law, contract, cable company practice or otherwise, a cable subscriber who wishes to avail himself of a competing service may do so by terminating cable service, paying the replacement cost of the interior wiring from the demarcation point if he does not already own it, and arranging for the alternative service. Nothing could be simpler. In sum, the Joint Petition is a

solution in search of a problem and the Joint Parties urge the Commission to reject it.

THE COMMISSION LACKS AUTHORITY TO ADOPT RULES AS
PROPOSED BY THE JOINT PETITION

As support for its proposal, the Joint Petition cites the Southwestern Cable³ case for the proposition that the Commission enjoys broad authority over cable television. As the Commission is well aware, Southwestern Cable involved a judicial effort to define the agency's regulatory jurisdiction over cable television under the 1934 Communications Act in the absence of express statutory provisions dealing with cable. More instructive, and indeed dispositive, is more recent legislative action conferring and withholding FCC authority as to specific aspects of cable regulation. In the Cable Communications Policy Act of 1984, Congress unambiguously decreed that:

Any cable system shall not be subject to regulation as a common carrier or utility by reason of providing any cable service.⁴

Nothing in Congress' revisitation of cable regulation in the Cable Television Consumer Protection and Competition Act of 1992 undercuts the force and effect of its earlier

³ United States v. Southwestern Cable Co., 392 U.S. 157 (1968).

⁴ 47 U.S.C. § 541(c).

pronouncement. Section 541(c) was left intact and unamended; moreover, in the specific context of the home wiring provision, Congress expressly cautioned that cable operators were not to be subjected to common carrier regulation with respect to interior wiring:

This section does not address matters concerning the cable facilities inside the subscribers' home prior to termination of service. In this regard, the Committee does not intend that cable operators be treated as common carriers with respect to the internal cabling installed in subscribers' homes.⁵

Congressional intent could not be more clearly stated. Not only does the statute not affirmatively grant to the Commission authority to impose telephone interior wiring rules on cable operators but it expressly constrains the Commission's authority to do so. The Joint Petition's assertion of Commission jurisdiction to adopt a more expansive cable interior wiring rule in the manner it proposes is thus misplaced and unavailing.

CABLE OPERATORS MUST RETAIN THE ABILITY TO MONITOR
AND PREVENT SIGNAL LEAKAGE AND THEFT OF SERVICE

As numerous parties pointed out in their comments in the home wiring rulemaking, consideration of ownership of interior wiring in the cable context necessarily implicates questions of signal leakage responsibility and theft of

⁵ H.R. Rep. No. 628, 102d Cong., 2d Sess. 118-19 (1992) (emphasis added).

service problems.⁶ Those concerns have been equally recognized by Congress⁷ and by the Commission:

Nothing in this subpart shall affect the cable system operator's rights and responsibilities under Section 76.617 to prevent excessive signal leakage while providing cable service, or the cable operator's right to access the subscriber's property or premises.⁸

In addition to the cable operator's obligation to ensure that cable plant, up to the terminal of the television receiver, does not cause excessive signal leakage, cable operators are also responsible for compliance with required FCC technical and performance specifications as well as with standards and objectives established, monitored and enforced by the individual operator or cable company. Ceding all control over the use of the interior wiring, as proposed by the Joint Petition, to the subscriber while he remains connected to the cable system will necessarily lead to noncompliance with technical specifications and performance standards and to degradation of service for other subscribers.

⁶ See, e.g. Comments of the National Cable Television Association, Inc. at 6-8.

⁷ House Report at 118-19.

⁸ Section 76.801; 47 C.F.R. §76.801.

CONCLUSION


The Joint Parties emphasize that they do not quarrel with the proposition that a subscriber may, under certain circumstances, acquire ownership in interior wiring prior to termination of service. Indeed, Section 76.801 expressly contemplates that result where the operator has transferred ownership to the subscriber, where the operator relinquishes ownership for tax purposes, or where the wiring is deemed to be a fixture by state or local law. Many operators may fall within one of these circumstances and the Joint Parties concur that in such cases the operator's ability to recover compensation upon termination of service may appropriately be limited. The Joint Parties strenuously object, however, to a regulatory requirement that would mandate a transfer of ownership or unrestricted use of cable interior wiring upon initial installation in every case. For the reasons set forth above, such a requirement would not only exceed the Commission's authority but it would exacerbate existing signal leakage and theft of service problems and concerns. Accordingly, the Joint Parties urge the Commission to dismiss

the Joint Petition for Rulemaking and terminate this proceeding.

Respectfully submitted,

CABLEVISION INDUSTRIES CORP.
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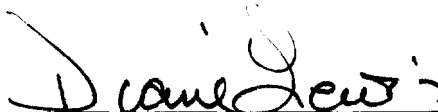
CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of December, 1993, I caused copies of the foregoing "JOINT COMMENTS IN OPPOSITION TO JOINT PETITION FOR RULEMAKING" to be mailed via first-class postage prepaid mail to the following:

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